NAZA ITALIA SDN BHD v. PERFECT LOGISTIC SERVICES

HIGH COURT MALAYA, SHAH ALAM
SURAYA OTHMAN J
[WRIT SUMMON NO: 22NCVC-358-07-2014]
31 MARCH 2016

CONTRACT: *Agency – Principle and agent – Theft of cars – Claim for loss of cars – Whether defendant appointed as logistic provider by plaintiff – Whether defendant's agent in possession of cars prior to theft – Whether defendant vicariously liable for acts of its agent – Whether defendant liable for loss of cars*

The plaintiff purchased two cars ('the said cars') from Ferrari SpA, in Italy. The plaintiff claimed that the defendant was appointed as its logistic services provider, in charge of providing transportation for the said cars. The said cars were stolen while in transit from Ferrari SpA factory to Port of La Spezia in Italy. The plaintiff contended that since the defendant was, at the material time, the appointed logistic provider of the plaintiff and in charge of transporting the said cars from Italy to Malaysia, and the defendant's servant or agent ('Box Line') was in possession of the said cars when the theft occurred, the defendant was thus liable for the loss of the said cars. The defendant, although admitted to being the custom clearance service provider, argued that (i) the plaintiff appointed Box Line which had taken possession of the said cars for the transportation of the said cars from Ferrari SpA to Malaysia; and (ii) the defendant was never given a routing order from the plaintiff to appoint an agent to act on their behalf. As such, the defendant contended that they were not the appointed logistic services provider for the plaintiff in respect of the said cars, had never taken possession of the said cars and was not responsible for the transportation of the said cars. The issues that arose for determination, *inter alia*, were (i) whether the defendant was the appointed logistic services provider for the plaintiff through a formal appointment in respect of the said two cars; (ii) whether the defendant and/or its servants and/or its agents took possession of the said cars; and (iii) whether the defendant and/or its servants and/or its agents were liable to the plaintiff for the loss of the said cars.

Held (allowing plaintiff's claim with costs):

(1) Despite the non-existence of a formal appointment letter or a written agreement between the defendant and the plaintiff, based on the numerous invoices, the defendant was in fact the logistic services provider for the plaintiff and not just a custom clearance services provider for the said cars. The invoices had been issued by the defendant since the year 2012 and the plaintiff had never failed to make payments based on the invoices. Therefore, a contractual obligation existed between the plaintiff and the defendant. (para 25)

(2) Box Line and the defendant had engaged in a fiduciary relationship where Box Line acted as an agent to the defendant. This is so since after the theft, Box Line immediately contacted the defendant to inform of the theft and sought advice pertaining to the said cars' insurance. The plaintiff was only notified by the defendant two days after the theft. This showed that Box Line was the agent of the defendant at the material time. Box Line was in charge of the transportation of the said cars and were in fact in possession of the said cars prior to the theft. Since Box Line was the defendant's agent, the defendant as the principal is vicariously liable for the acts of its agent. (para 35)

(3) The plaintiff had established that the said cars were in the possession of the defendant's agent, Box Line prior to the theft. Thus, it was the duty of the defendant to ensure that the said cars were safely transported from Ferrari SpA to Port of La Spezia in Italy and subsequently to Malaysia. The defendant failed to do this and was not discharged from the liability imposed on them. The defendant was negligent (through its agent, Box Line) and liable for the loss of the said cars. The defendant thus had to compensate the plaintiff for the loss of the said cars. (para 41)

Case(s) referred to:

Caltex Oil Malaysia Limited v. Classic Best Sdn Bhd & 3 Ors [2006] 1 LNS 266 HC ***(refd)***

Daiman Development Sdn Bhd v. Mathew Lui Chin Tech & Anor Appeal [1980] 1 LNS 180 PC ***(refd)***

Eckhardt Marine GMBH v. Sheriff Mahkamah Tinggi Malaya & Ors [2001] 3 CLJ 864 CA ***(refd)***

George Wong Siu Cheng v. Amcan Sdn Bhd [2007] 3 CLJ 1 CA ***(refd)***

Ho Kam Phaw v. Fam Sin Nin [1998] 3 CLJ 708 CA ***(refd)***

KGN Jaya Sdn Bhd v. Pan Reliance Sdn Bhd [1996] 2 CLJ 611 CA ***(refd)***

Lefkowitz v. Great Minneapolis Surplus Store (1957) 251 Minn 188 ***(refd)***

Malayan Flour Mills Bhd v. Saw Eng Chee & Anor [1997] 2 CLJ Supp 35 HC ***(refd)***

Scammell & Nephew Ltd v. Ouston [1941] 1 AC 251 ***(refd)***

Solid Investments Ltd v. Alcatel Lucent (Malaysia) Sdn Bhd [2014] 3 CLJ 73 FC ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 11

Contracts Act 1950, s. 3

For the plaintiff - Aaron Mathews & Nereen Kaur Veriah; M/s Shook Lin & Bok

For the defendant - S Pandi Durai; M/s S Pandi Durai & Assocs

Reported by Sandra Gabriel

JUDGMENT

Suraya Othman J:

Introduction

[1] The plaintiff purchased two cars, the models being a 458 Spider and a 458 Italia ("the said cars") for the price of EUR200,488 and EUR178,711 respectively (total amount equivalent to RM1,723,838.65) from Ferrari SpA, in Italy. The plaintiff claimed that the defendant was appointed as its logistic services provider, in charge of providing transportation for the said cars. The said cars were stolen sometime between 5.30pm on 18 September 2013 and 4.40pm on 19 September 2013 while in transit from Ferrari SpA factory to Port of La Spezia in Italy. The plaintiff claimed that the said cars were in the possession of the defendant and its servant or agent when the theft occurred. The plaintiff then claimed for compensation for the price of the said cars, interest and costs. I heard the case and found for the plaintiff. The defendant, dissatisfied, appealed against my decision.

Brief Facts

[2] The plaintiff, Naza Italia Sdn Bhd, is the exclusive importer and franchise holder of Ferrari automobiles and is in the business of importing and dealing with new Ferrari cars and its spare parts, as well as providing repair services for motor vehicles.

[3] The defendant, Perfect Logistic Services, is in the business of sea and air freight cargo and custom clearance services. The plaintiff alleged that the defendant (and/or its servants and/or its agents) was at the material time the appointed logistic services provider of the plaintiff.

[4] On 29 April 2013 and 29 May 2013, the plaintiff purchased two Ferrari cars from Ferrari SpA in Italy, the models being a 458 Spider and a 458 Italia ("the said cars") for a sum of EUR200,488 and EUR178,711 respectively. This amounted to RM1,723,838.65 (at the exchange rate of approximately 4.546).

[5] By way of an email dated 4 September 2013, Ferrari informed one Box Line United Cargo Link ("Box Line") that the six cars including the two said cars were available for shipment to Malaysia.

[6] However, on or about 21 September 2013, the defendant informed the plaintiff, *via* telephone, that the said cars had been stolen prior reaching the Port of La Spezia in Italy sometime between 5.30pm on 18 September 2013 and 4.40am on 19 September 2013.

[7] Subsequently, an email dated 25 September 2013 was sent to the plaintiff by the defendant's Managing Director, Mr Krisna Roy Raman, containing the translation of a police report lodged in Italy regarding the theft of the said cars.

[8] The plaintiff alleged that since the defendant was, at the material time, the appointed logistic provider of the plaintiff and in charge of transporting the said cars from Italy to Malaysia, and the defendant's servant or agent was in possession of the said cars when the theft occurred, the defendant is thus liable for the loss of the said cars.

[9] The plaintiff then filed a suit in court for:

(i) the sum of RM1,723,838.65;

(ii) interest at the rate of 5% per annum on the sum stated in (i) above, from the filling of this action until the date of judgment pursuant to s. 11 of the Civil Law Act 1956;

(iii) interest at the rate of 5% per annum on the judgment sum from the date of judgment until the date of final and full settlement;

(iv) costs of this action; and

(v) such further or other relief as this Honourable Court deems just and fit.

The Defence

[10] The defendant contended that they were not the appointed logistic services provider in respects of the said cars. The defendant did not take possession of the said cars and was not liable for the loss of the said cars.

[11] The defendant further contended that the plaintiff had appointed Box Line in Italy for the transportation of the said cars from Ferrari SpA to Malaysia. Box Line had taken possession of the said cars on 18 September 2013. The defendant was never given a routing order from the plaintiff to appoint an agent to act on their behalf.

[12] The defendant admitted that they have always provide customs clearance services to Box Line and the plaintiff has full knowledge of this fact.

[13] The defendant stated that at the request of Box Line, the defendant being the customs clearance agent on the Malaysian side, had notified the plaintiff that the said cars had been stolen in Italy, sometime between the hours of 5.30pm on 18 September 2013 and 4.40am on 19 March 2013.

[14] The defendant reiterated that they were not the appointed logistic services provider for the plaintiff in respect of the said cars and the defendant was not responsible for the transportation of the said cars. The defendant and/or its servants and/or its agents had never taken possession of the said cars on 18 September 2013 and is thus not liable for the loss.

Issues for Trial

[15] The issues agreed between the plaintiff and defendant are:

(i) whether the defendant was the appointed logistic services provider for the plaintiff through a formal appointment in respect of the two automobiles;

(ii) whether it was specifically agreed between the plaintiff and the defendant through contract as to the extent of liability and damages to be borne by parties in the event of any breaches;

(iii) whether the defendant (and/or its servants and/or its agents) took possession of the said cars on 18 September 2013;

(iv) whether the plaintiff was negligent in not complying with the procedural requirement in importing the said cars; and

(v) whether the defendant (and/or its servants and/or its agents) are liable to the plaintiff for the loss of the said cars.

Did The Plaintiff Appoint The Defendant As Its Logistic Services Provider

[16] According to the plaintiff, in order for a contractual obligation to exist, due emphasis must be placed on the contemporaneous documents such as the invoices issued by the defendant (*Caltex Oil Malaysia Limited v. Classic Best Sdn Bhd & 3 Ors* [2006] 1 LNS 266; [2007] 4 MLJ 772). The invoices issued by the defendant with regards to the said cars can be seen in p. 120 of bundle CBD. In fact, the defendant had been providing the plaintiff with logistic services since 2012. Thus, it is established that there existed between the parties a relationship where the defendant has been providing logistic services for the plaintiff not only for the said cars but for the plaintiff's cars since 2012. Thus, I find from the document at p. 120 CBD that a contractual relationship existed between the parties and the defendant was the logistic services provider for the plaintiff.

[17] However, the defendant submitted that it was only a custom clearance service provider. Mr Tan Chin Hock (SP1), who is the Associate Vice President in charge of accounting and finance in the plaintiff's company, admitted that there was no formal appointment letter appointing the defendant as the logistic provider and there were no terms agreed upon between both parties. The defendant relied on the case of *Scammell & Nephew Ltd v. Ouston* [1941] 1 AC 251, where the court found that the agreement was not enforceable because the terms were uncertain and required further agreement between the parties.

[18] Though SP1 confirmed that there was no formal appointment letter appointing the defendant as the logistic services provider, Ms Sivagami Perumal (SD1) who is the Operations Manager in the defendant's company admitted that the defendant had rendered services to the plaintiff and the defendant had issued invoices since 2012 (see pp. 50 to 205 of bundle CBD). SP1 in his evidence stated that upon the delivery of the automobiles to Port Klang, the defendant would issue to the plaintiff invoices for services along with supporting documentation. The plaintiff will then process the invoices and make the necessary payments to the defendant. The invoices can be seen in pp. 110 and 110 of the bundle CBD.

[19] In SDI's evidence, in cross-examination, (see pp. 151 and 152 of notes of proceeding), she stated:

> Q: So you agree with me, when I say that, when Perfect invoiced Naza for logistical services such as inland haulage, they were invoicing Naza for these works?
>
> A: Yes.
>
> Q: They were invoicing Naza for inland haulage?
>
> A: For releasing agent.
>
> Q: And they did for Naza. Correct? You agree with me that Perfect did work for Naza?
>
> A: Yes.

[20] Under s. 3 of the Contracts Act 1950 (Act 136), it states:

> Communication, acceptance and revocation of proposals
>
> The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate the proposal, acceptance, or revocation, or which has the effect of communicating it.

[21] In the case of *Malayan Flour Mills Bhd v. Saw Eng Chee & Anor* [1997] 2 CLJ Supp 35; [1997] 1 MLJ 763 the court referred to *Chesire, Fifoot and Firmstone's Law of Contract* (12th edn), and stated:

> In deciding whether there is a concluded contract in a given case the Court will have to examine all the circumstances to see if a party may be assumed to have made a firm offer and if the other may likewise be taken to have accepted that offer a situation often referred to as a meeting of the mind upon a common purpose or *consensus ad idem*.
>
> In as much as an offer must consist of a definite promise to be bound on the terms specified, the acceptance must be communicated to the offerer by an external manifestation of assent, some word spoken or act done by the offeree or by his authorised agent which the law can regard as the communication of acceptance to the offeror.
>
> What constitutes an effective communication of acceptance must necessarily depend on the circumstances of the case. The offeree's intention to accept must be conclusive and he must not treat the negotiation between the parties as still open to the process of bargaining. He must unreservedly assent to the exact terms of offeror. If while purporting to accept the offer as a whole, he introduces a new term which the offeror has not the chance of examining, he is in fact making a counter offer. The effect of this in the eyes of the law is to destroy the original (see also s. 7 of the Contracts Act 1950).

[22] In the case of *Eckhardt Marine GMBH v. Sheriff Mahkamah Tinggi Malaya & Ors* [2001] 3 CLJ 864; [2001] 4 MLJ 49 the Court of Appeal referred to *Lefkowitz v. Great Minneapolis Surplus Store* (1957) 251 Minn 188 where it was stated:

> We are of the view on the facts before us that the offer by the defendant of the sale of the Lapin fur was clear, definite, and explicit, and left nothing open for negotiation. The plaintiff having successfully managed to be the first one to appear at the seller's place of business to be served, as requested by the advertisement, and having offered the stated purchase price of the article, he was entitled to performance on the part of the defendant. We think the trial court was correct in holding that there was in the conduct of the parties a sufficient mutuality obligation to constitute a contract of sale. Third, an offer may be made unconditionally or upon stated conditions. In the later case, an acceptance to be valid must accord with the terms of the offer. A conditional offer lapses upon the failure of the condition. If authority is required for these rather elementary propositions, it may be found in *Financings Ltd v. Stimson* [1981] 3 All ER 386.

[23] In the case of *Daiman Development Sdn Bhd v. Mathew Lui Chin Tech & Anor Appeal* [1980] 1 LNS 180; [1981] 1 MLJ 56 it states that:

> The question whether parties have entered into contractual relationships with each other essentially depends upon the proper understanding of the expressions they have employed in communicating with each considered against the background of the circumstances in which they have been negotiating, including in those circumstances the provisions of any applicable law. Where they have expressed themselves in writing the proper construction of the writing against that background will answer the question. The purpose of the construction is to determine whether the parties intend presently to be bound to each other or whether, no matter how complete their arrangement might appear to be, they do not so intend until the occurrence of the same further event, including the signature of some further document or the making of some further arrangement. The question is one as to express intention and is not to be answered by the presence or absence of any particular form of words.

[24] In the case of *Ho Kam Phaw v. Fam Sin Nin* [1998] 3 CLJ 708; [1998] 2 MLJ 713 the Court of Appeal referred and applied the proposition of law in *Chitty on Contracts* as follows:

> Method must generally be complied with. An offer which requires the acceptance to be expressed or communicated in a certain way can generally be accepted only in that way.
>
> Thus if the offeror asks for the acceptance to be sent to a particular place, one sent elsewhere will not bind him *Frank v. Knight* (1937) OPD 113; *Eliason v. Henshaw* (1819) 4 Wheat 225; *Walker v. Glass* [1979] NI 129, nor will he be bound by an oral acceptance if he has asked for it to be expressed in writing. *Financings Ltd v. Stimson* [1962] 1 WLR 1184. This rule is particularly strict where the offer is contained in an option. *Holwell Securities Ltd v. Hughes* [1974] 1 WLR 157.

[25] Applying the above authorities to the present case, I observed that despite the non-existence of a formal appointment letter or a written agreement between the defendant and the plaintiff, SP1 and SDI evidence and the supporting documents (ie, the numerous invoices and especially the invoice at p. 120 CBD), showed that the defendant was in fact the logistic services provider for the plaintiff and not just a clearance services provider for the said cars. The invoices had been issued by the defendant since the year 2012 and the plaintiff had never failed to make payments based on the invoices. For this reason and based on the cited authorities above, a contractual obligation existed between the plaintiff and the defendant.

Was The Defendant (And/Or Its Servants And/Or Its Agents) In Charge Of The Transportation And In Possession Of The Said Cars Prior To The Theft

[26] An email dated 4 September 2013 (see p. 11 of bundle CBD) was sent by Ferrari to Box Line which stated that six cars including the two said cars were ready to be shipped to the plaintiff. The plaintiff contended that Box Line was the defendant's agent. Thus, the defendant (and/or its servants and/or its agents) was responsible for the transportation and were in possession of the said cars.

[27] The plaintiff quoted the case of *KGN Jaya Sdn Bhd v. Pan Reliance Sdn Bhd* [1996] 2 CLJ 611; [1996] 1 MLJ 233 and the case of *George Wong Siu Cheng v. Amcan Sdn Bhd* [2007] 3 CLJ 1; [2007] 3 MLJ 193, where the court opined:

> ... whether the relationship of agency exists in the present case depends not in the use of terminology but on the exact circumstances of the relationship between the alleged principle and agent ... First, the word is frequently used to describe the position of a person who is employed by another to perform duties often of a technical or professional nature which he discharges as the other's alter ego ...

[28] In our instant case, the plaintiff had never communicated with Box Line. Until the theft, the plaintiff was unaware of Box Line's existence.

[29] The defendant submitted that Box Line was not their appointed agent in Italy. The defendant did not authorise or instruct Box Line to take possession of the said cars from Ferrari. The defendant contended that Box Line was in fact an appointed agent of the plaintiff.

[30] According to Ms Sivagami Perumal (SD1), the defendant received an email dated 19 September 2013 from Box Line informing of the theft. The email is produced as below:

> Dear Roy,
>
> This is to inform you that tonight between 17.30pm (18/9/2013) and 4.40pm (19/9/2013) someone stole the full cntr UACU832909.4 with 2 Ferrari inside (458 Spider-458 Italia invoices attached).
>
> Please find attached the denounce/statement of the truck driver released to the Italian authorities.

Basically the truck driver is declaring that he was sleeping at home during the theft and of course he didn't realise anything (the truck was parked close to his house).

Roy please advise if the cars were insured and if so which insurance company were insured with.

We will provide you soon the letter to make the shipping company UASAC responsible for this matter as they were also in charge of the inland transportation.

Waiting for you comments.

Michael Cagnoni

[31] The defendant, then informed the plaintiff regarding the theft *via* telephone on 21 September 2013. Upon request by the plaintiff, an email by Box Line to the defendant was sent attached with the translated copy of the report lodged by the driver of the trailer (see p. 23 of bundle CBD).

[32] Once Box Line knew about the theft, Box Line immediately informed the defendant *via* email dated 19 September 2013. The content of the email showed Box Line seeking the defendant's advice and inquiring whether the said cars were insured or not.

[33] The defendant submitted that Box Line contacted them since as the customs clearance services provider they need to be informed of the theft. SD1 in her evidence confirmed that Box Line reported to the defendant and the defendant made further inquiries in respect of the theft.

[34] In the case of *Solid Investments Ltd v. Alcatel Lucent (Malaysia) Sdn Bhd* [2014] 3 CLJ 73; [2014] 3 MLJ 785, His Lordship, Hasan Lah FCJ, observed:

The class of fiduciary relationships is never closed (*English v. Dedham Vale Properties Ltd* [1978] 1 All ER 382, per Slade J). As can be seen from the English cases, the English judges have never attempted to formulate a comprehensive definition of who is a fiduciary. Certain relationships are well known to be fiduciary. In *Snell's Equity* (32nd Ed) [2010] Thompson Reuters at pp. 172 to 178, the learned author stated that the accepted categories in which the courts presume the existence of a fiduciary relationship are as follows:

(a) director *vis-a-vis* their companies;

(b) solicitor-client relationships;

(c) agent-principal relationship; and

(d) partnerships.

Notwithstanding that there are authorities to say that fiduciary duties may be owed where the circumstances justify the imposition of such duties. In this connection the learned author of *Snell's Equity* stated at pp 175 and 176 as follows:

(c) *Ad hoc* fiduciary relationships

A (1) PRINCIPLES. The categories of fiduciary relationship are not closed. Fiduciary duties may be owed despite the fact that the relationship does not fall within one of the settled categories of fiduciary relationships, provided the circumstances justify the imposition of such duties. Identifying the kind of circumstances that justify the imposition of fiduciary duties is difficult because the courts have consistently declined to provide a B definition, or even a uniform description, of a fiduciary relationship, preferring to preserve flexibility in the concept. Numerous academic commentators have offered suggestions, but none has garnered universal support. Thus, it has been said that the 'fiduciary relationship is a concept in search of a principle. There is, however, growing judicial support for the view that:

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> a fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. *The concept enraptures a situation where one person is in a relationship with another which gives rise to a legitimate expectation, which equity will recognise, that the fiduciary will* D *not utilise his or her position in such a way which is adverse to the interests of the principal. The expectation is assessed objectively, and so it is not necessary for the principal subjectively to harbour the expectation.*

In *Bristol and West Building Society v. Mothew* [1998] Ch 1 at p. 18, Millet LJ made the following observation on the question of who is a fiduciary:

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> A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make F a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. G As Dr Finn pointed out in his classic work *Fiduciary Obligations* (1977), p. 2, he is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary.

H **[35]** Applying the case above, I am of the view that Box Line and the defendant had engaged in a fiduciary relationship where Box Line acted as an agent to the defendant. This is so since after the theft, Box Line immediately contacted the defendant to inform of the theft and sought advice pertaining to the said cars' insurance. The question here is, if Box Line was appointed by the plaintiff, why did Box Line contact and request for advice from the I defendant instead of the plaintiff. Why did Box Line not inform the plaintiff regarding the theft? The plaintiff was only notified by the defendant two days after the theft. This showed that Box Line was the agent of the defendant

at the material time. Box Line was in charge of the transportation of the said cars and were in fact in possession of the said cars prior to the theft. Since Box Line was the defendant's agent, the defendant as the principal is vicariously liable for the acts of its agent.

Is The Plaintiff Responsible For Failing To Obtain Insurance Coverage For The Said Cars

[36] The plaintiff submitted that the defendant failed to produce any term or condition which requires the plaintiff to take out insurance policies for the said cars. Even in a case where there was no insurance policy obtained, it does not absolve the liability of the defendant in respect of the said cars.

[37] The defendant contended that the plaintiff was negligent because they failed to take out insurance policies for the said cars.

[38] I cannot agree with the contention of the defendant. I find that even though the plaintiff had failed to obtain insurance policies for the said cars, the defendant cannot escape its liability since the defendant was the logistic services provider for the said cars.

Is The Defendant (And/Or Its Servants And/Or Its Agents) Liable To The Plaintiff For The Loss Of The Said Cars

[39] Again, the defendant submitted that since there was no formal letter of appointment, the defendant is not liable for the loss of the said cars.

[40] The plaintiff submitted that since the defendant has undertaken the responsibility of transporting the said cars and had received payments for services rendered, the defendant has also undertaken the liability which comes hand in hand with the benefit to be obtained ie, the payments. I agree with the plaintiff's contention.

[41] In the circumstances, on the balance of probabilities, I find that the plaintiff has established that the said cars were in the possession of the defendant's agent, Box Line prior to the theft. Thus, is it the duty of the defendant to ensure that the said cars were safely transported from Ferrari SpA to Port of La Spezia in Italy and subsequently to Malaysia. The defendant failed to do this and is not discharged from the liability imposed on them. I find that the defendant was negligent (through its agent, Box Line) and liable for the loss of the said cars. The defendant thus has to compensate the plaintiff for the loss of the said cars. As such, I allow the plaintiff's claim with costs of RM15,000.

[42] The plaintiff's claim is allowed with costs of RM15,000.